

NANCY S. HEINBOLD  
CLERK OF COURTS  
STARK COUNTY, OHIO

IN THE COURT OF COMMON PLEAS  
STARK COUNTY, OHIO

2015 JUL 24 PM 3:57

KU 5 CV 01543

Hartnett

EMERGENCY MEDICAL TRANSPORT, INC.  
2511 Waynesburg Drive S.E.  
Canton, Ohio 44707

Plaintiff,

v.

ROSELAWN GARDENS HEALTHCARE, LLC  
c/o Matthew Dapore  
979 Brule Ct.  
Westerville, Ohio 43081

Also Serve At:

ROSELAWN GARDENS  
HEALTHCARE, LLC  
11999 Klinger Avenue, NE  
Alliance, Ohio 44601

and

ROSELAWN GARDENS NURSING &  
REHABILITATION, INC.  
c/o Statutory Agent  
Benjamin J. Parsons  
5990 Venture Drive, Suite A  
Dublin, Ohio 43017

Also Serve At:

ROSELAWN GARDENS NURSING &  
REHABILITATION, INC.  
11999 Klinger Avenue, NE  
Alliance, Ohio 44601

Defendants.

CASE NO.

JUDGE

COMPLAINT

Breach of Contract  
Unjust Enrichment

(Jury Demand Endorsed Hereon)

2015 JUL 24 PM 3:57

Now comes Plaintiff, Emergency Medical Transport, Inc. ("EMT"), by and through its undersigned counsel, and for its complaint against Defendants states as follows:

GENERAL ALLEGATIONS

1. EMT is an Ohio corporation with its principal place of business in Canton, Stark County, Ohio which engages in the business of ambulance and medical transportation.

2. Roselawn Gardens Healthcare, LLC and Roselawn Gardens Nursing & Rehabilitation, Inc. ("Defendants") are Ohio companies with statutory agent addresses set forth in the caption of this complaint.

3. Defendants own and operate a nursing home at 11999 Klinger Avenue, NE, Alliance, Ohio 44601 utilizing the names "Roselawn Gardens" and "Roselawn Gardens Skilled Nursing & Rehabilitation."

4. Defendants and their predecessors-in-interest formerly operated the nursing home utilizing the name "Roselawn Terrace."

5. Venue of this action is proper pursuant to Ohio Civil Rule 3(B)(2), (B)(3), and B(6).

COUNT I  
Breach of Contract

6. EMT realleges and reavers each and every allegation contained in Paragraphs 1 through 5 as if fully rewritten herein.

7. EMT and Defendants entered into two contracts whereby EMT agreed to provide Defendants with ambulance and medical transportation services and Defendants agreed to compensate EMT for such services. A copy of the first contract is attached hereto as Exhibit "A". A copy of the second contract is attached hereto as Exhibit "B".

8. EMT accepted said employment and duly performed all the conditions under the contract.

9. Defendants have breached the contract by failing to make payments due and owing for EMT's ambulance and medical transportation services performed pursuant to the contract in the amount of Three Hundred Seventy-Seven Thousand Eight Hundred Ninety and 48/100 Dollars (\$377,890.48).

10. As the direct and proximate result of Defendants' breach, EMT has been damaged in the amount of Three Hundred Seventy-Seven Thousand Eight Hundred Ninety and 48/100 Dollars (\$377,890.48).

11. The contracts also provide that Defendants will place the "first call" for all ambulance and medical transportation services to EMT.

12. Defendants have breached the contracts by failing to place the "first call" to EMT, and instead placed the first call to other ambulance and medical transportation service providers.

13. Defendants have breached the contracts by utilizing other ambulance and medical transportation service providers without the knowledge of EMT.

14. As the direct and proximate result of Defendants' breach, EMT has been damaged in an amount in excess of \$25,000.

**COUNT II**  
**Unjust Enrichment**

15. EMT restates and realleges each and every allegation contained in Paragraphs 1 through 14 as if fully rewritten herein.

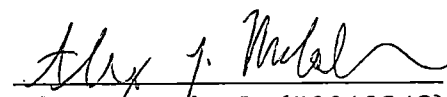
16. EMT performed ambulance and medical transportation services for Defendants with a reasonable value of Three Hundred Seventy-Seven Thousand Eight Hundred Ninety and 48/100 Dollars (\$377,890.48).

17. As a result of Defendants' failure to pay the reasonable value of EMT's ambulance and medical transportation services, Defendants have been unjustly enriched in the amount of Three Hundred Seventy-Seven Thousand Eight Hundred Ninety and 48/100 Dollars (\$377,890.48).

18. As a result of Defendants' unjust enrichment, EMT has been damaged in the amount of Three Hundred Seventy-Seven Thousand Eight Hundred Ninety and 48/100 Dollars (\$377,890.48).

WHEREFORE, Plaintiff Emergency Medical Transport, Inc. demands judgment against Defendants, jointly and severally, in an amount in excess of \$25,000, and interest at the maximum statutory rate from the date services were rendered, and Plaintiff's costs herein expended.

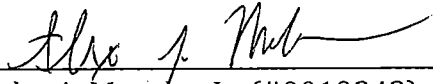
Respectfully submitted,

  
John A. Murphy, Jr. (#0019242)  
Alex J. McCallion (#0086773)  
DAY KETTERER LTD.  
Millennium Centre-Suite 300  
200 Market Avenue North  
P.O. Box 24213  
Canton, Ohio 44701-4213  
Telephone (330) 455-0173  
Facsimile (330) 455-2633  
[jamurphy@dayketterer.com](mailto:jamurphy@dayketterer.com)  
[ajmccallion@dayketterer.com](mailto:ajmccallion@dayketterer.com)

Attorneys for Plaintiff

JURY DEMAND

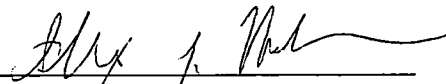
Plaintiff hereby demands a trial by jury on all issues presented herein before the maximum number of jurors allowed by law.

  
\_\_\_\_\_  
John A. Murphy, Jr. (#0019242)  
Alex J. McCallion (#0086773)

REQUEST FOR SERVICE

To the clerk:

To the Best of the undersigned's knowledge, the last known addresses of the Defendants are set forth in the caption of the complaint. Please serve the Summons and Complaint upon Defendants at the addresses listed in the caption of the within matter by U.S. certified mail, return receipt requested.

  
\_\_\_\_\_  
John A. Murphy, Jr. (#0019242)  
Alex J. McCallion (#0086773)

# SERVICE CONTRACT



This agreement is between Roselawn Terrace hereinafter referred to as "Facility" and Emergency Medical Transport, Inc. hereinafter referred to as "Provider" and is made this 25th day of January in the year of our Lord, 2010. Agreement is made effective upon signing.

WHEREAS, The Facility is currently providing nursing care & support to their residents and therefore will from time to time be in need of Ambulance and Medical Transportation services, and

WHEREAS, Provider desires to make available said Ambulance and Medical Transportation services for said Facility to certain other medical facilities, and

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Medical Transportation - Provider shall make available Ambulance and Medical Transportation services from its local facilities or by arrangement, twenty-four (24) hours per day, seven (7) days per week;

2. Dispatch - Dispatch services shall from a fixed location using a Computer Aided Dispatch System, and be available twenty-four (24) hours per day, seven (7) days per week, including holidays. Due to the nature of emergency ambulance service, Provider can not guarantee that an ambulance will be available for immediate emergency dispatch at all times. In the event that an ambulance is not available for immediate dispatch, Provider's dispatch center will advise caller of this situation, and the estimated time of arrival, hereinafter known as "ETA" and if this is acceptable, will proceed with the transport;

3. Staffing - All ambulances will be staffed, at minimum, in accordance with state and local guidelines issued by The Department of Public Safety. There will be at no time any less than two medically trained persons on each emergency ambulance dispatched for transport at any time;

4. Vehicles - All medical transportation vehicles will be equipped to meet all state and local guidelines issued by The Ambulance and Medical Transportation Board;

5. Reports - Provider will complete a report of all medical treatment performed on any patient transported from the Facility and will be made available to the destination hospital on each emergency transport completed. The report will contain at minimum such information required by state and local guidelines;

6. Billing - Emergency Medical Transport, Inc. will at no time bill the Facility for any transports made at their request unless required to do so by insurance regulations or laws. Payment for certain transports will be the responsibility of the Nursing Facility providing care for



said patient. Patient billing information will be provided to the Provider as needed by Facility. The charges for each transport will be assumed to be prompt payment and are as shown in exhibit "a".

7. Medical Necessity - Facility shall provide such certifications of medical necessity for transport hereinafter known as CMN's as needed for billing purposes when necessary. The Facility shall only order medically necessary levels of service from Provider;

8. Independent Contractor - Provider is at all times an independent contractor and not an agent or employee of Facility. No act of commission or omission by either party shall make the other a principal, agent or employee of the other;

9. Insurance - Provider shall at all times at its own expense maintain comprehensive public liability, medical/professional liability and motor vehicle insurance against all claims for damage or loss of property, and for bodily injury, including death resulting from acts of the Provider or its employees or agents negligence, with minimum limits of \$3,000,000. Provider agrees to maintain insurance coverage with carriers in limits mandated by law for workers compensation, occupational disease and employer liability;

10. Calls for service - Due to the increased staffing, equipment, and supply requirements by Provider in performance of this agreement, Facility agrees to place the first call for service for all emergency and non-emergency ambulance medical transports to Provider. Should the patient have a preference, this preference shall override this agreement in any event. In the event that timely and suitable transportation arrangements are not attainable through Provider, Facility shall make arrangements with any ambulance supplier that they deem advisable for said patient. This contract is not to be considered exclusive but shall only address the first call for service for said patient;

11. Discrimination - Provider will treat and transport any and all patients regardless of race, creed, national origin, or ability to pay, as deemed medically necessary by Facility. Insurance screening will not be done prior to any emergency transport of any patient from Facility. Provider currently has in place a written equal employment opportunity policy and will maintain this policy at all times;

12. Term of Agreement - This agreement shall begin upon signing and remain in force for the term of two years from that date. This agreement shall automatically renew for a like period of time at its anniversary date unless a written notification to cancel or amend is received 90 days prior to the anniversary date of same;

13. Entire Agreement - This agreement constitutes the sole and entire agreement between the parties concerning the subject matter hereof, and may not be modified, discharged or amended except in writing signed by the duly authorized officers of each party;

14. Ambulette Wheel Chair Service - Provider will offer to the Facility the use of our ambulette vehicles as available for pre-scheduled transport of wheel chair bound patients. The charges for this service will be billed directly to insurance (if applicable) and covered when the patient qualifies for same; Should payment for these services be deemed payable by facility, the rates provided in Exhibit "A" shall prevail.

15. In it For Life Program - Provider thru its "In it For Life Program" will, provide for the installation of an AED device on the premises of Facility which will remain the property of Provider but will be placed at the facility for use in emergency situations by the Staff of the Facility prior to our arrival to aid in providing the best chances for patient survival. This unit will be maintained

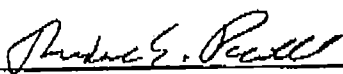
and serviced by the Provider, and initial as well as on going training will be provided as to its care and safe use by the provider initially, and on an as needed basis. The need for this service, maintenance and training shall be determined by the Facility whom will notify Provider of need.

16. Confidentiality of Agreement - Due to the competitive nature of the medical field in general, rates and terms contained in this agreement are deemed confidential information by the Provider and is not to be released beyond the control of the Facility;

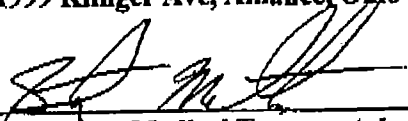
17. Indemnification - Each party hereby agrees to indemnify and hold harmless the other from and against any and all claims, costs, actions, causes of action, suits, judgments, damages, liabilities, losses or expenses included but not limited to attorney's fees and the fees and costs associated with same as a consequence of any acts or omissions of the other party, its employees, or agents.

18. Resident Life Link Contracts - Each resident of The Facility will be eligible for membership in our prepaid subscription program. The fee for this service will be \$15.00 per resident per one year period. This agreement does not at any time require the purchase of our Life Link plan for any patients but simply guarantees the availability of same to your residents and the pricing set forth;

19. Agreement - Due to the volatility in the healthcare environment and ever changing rules, should any part of this agreement for any reason be declared invalid, such decision shall not affect the validity of any remaining provisions, which remaining provisions shall remain in full force and effect as if this agreement had been executed with the invalid portion eliminated.

Signed   
Roselawn Terrace  
11999 Klinger Ave, Alliance, Ohio 44601

Dated 2/2/10, 2010

Signed   
Emergency Medical Transport, Inc.  
2511 Waynesburg Dr. SE, Canton, Ohio 44707

Dated 1-26, 2010



Rose Lawn / Alliance

6. Billing - Emergency Medical Transport, Inc. will at no time bill Rose Lawn Terrace for any transports made at the request of Rose Lawn Terrace unless required to do so by insurance regulations or laws. With regard to the PPS Medicare payment system, payment for certain transports will be the responsibility of the Nursing Facility providing care for said patient;

The charges for each transport will be as follows:

\$ .05 per part A day plus:

Ambulance Transport Fee	\$ 85.00
Ambulance Mileage over 15 miles	\$ 2.53 Loaded Mile
Wheel Chair Transport	\$ 25.00
Mileage over 15 miles	\$ 1.00 / Loaded Mile

10% discount applied if paid within 15 days from invoice date.

Patient billing information will be provided to Emergency Medical Transport, Inc. as needed by Rose Lawn Terrace.

7. Medical Necessity - Rose Lawn Terrace shall provide such certifications of medical necessity for transport hereinafter known as CMN's as needed for billing purposes when necessary;

8. Independent Contractor - Emergency Medical Transport, Inc. is at all times an independent contractor and not an agent or employee of Rose Lawn Terrace. No act of commission or omission by either party shall make the other a principal, agent or employee of the other;

9. Insurance - Emergency Medical Transport, Inc. shall at all times at its own expense maintain comprehensive public liability, medical/professional liability and motor vehicle insurance against all claims for damage or loss of property, and for bodily injury, including death resulting from Emergency Medical Transport, Inc.'s or its employees or agents negligence, with minimum limits of 1,000,000. Emergency Medical Transport, Inc. agrees to maintain insurance coverage with carriers in limits mandated by law for workers compensation, occupational disease and employer liability;

10. Calls for service - Due to the increased staffing, equipment, and supply requirements by Emergency Medical Transport, Inc. in performance of this agreement, Rose Lawn Terrace agrees to place the first call for service for any and all emergency and non-emergency medical transports to Emergency Medical Transport, Inc. In the event that timely and suitable transportation arrangements are not attainable through Emergency Medical Transport, Inc., Rose Lawn Terrace shall make arrangements with any ambulance supplier that they deem advisable for said patient. This contract is not to be considered exclusive but shall only address the first call for service for said patient;

(TUE)MAR 12 2013 9:20/ST, 9:19/No.7530765028 P 2

## SERVICE CONTRACT



This agreement is between Rose Lawn Gardens hereinafter referred to as "Facility" and Emergency Medical Transport, Inc. hereinafter referred to as "Provider" and is made this 12 day of March in the year of our Lord, 2012. Agreement is made effective upon signing.

15

WHEREAS, The Facility is currently providing nursing care & support to their residents and therefore will from time to time be in need of Ambulance and Medical Transportation services, and

WHEREAS, Provider desires to make available said Ambulance and Medical Transportation services for said Facility to certain other medical facilities, and

### NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Medical Transportation - Provider shall make available Ambulance and Medical Transportation services from its local facilities or by arrangement, twenty-four (24) hours per day, seven (7) days per week;

2. Dispatch - Dispatch services shall from a fixed location using a Computer Aided Dispatch System, and be available twenty-four (24) hours per day, seven (7) days per week, including holidays. Due to the nature of emergency ambulance service, Provider can not guarantee that an ambulance will be available for immediate emergency dispatch at all times. In the event that an ambulance is not available for immediate dispatch, Provider's dispatch center will advise caller of this situation, and the estimated time of arrival, hereinafter known as "ETA" and if this is acceptable, will proceed with the transport;

3. Staffing - All ambulances will be staffed, at minimum, in accordance with state and local guidelines. There will be at no time any less than two medically trained persons on each emergency ambulance dispatched for transport at any time other than in a disaster situation;

4. Vehicles - All medical transportation vehicles will be equipped to meet all state and local guidelines issued by The Ambulance and Medical Transportation Board;

5. Reports - Provider will complete a report of all medical treatment performed on any patient transported from the Facility and will be made available to the destination hospital on each emergency transport completed. The report will contain at minimum such information required by state and local guidelines;

6. Billing - Emergency Medical Transport, Inc. will at no time bill the Facility for any transports made at their request unless required to do so by insurance regulations or laws or agreement. Payment for certain transports will be the responsibility of the Nursing Facility

16

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EXHIBIT

B

tabbier

FROM EMT - Canton

(TUE)MAR 12 2013 8:20/ST. 9:19/No.7530785026 P 3

providing care for said patient. Patient billing information will be provided to the Provider as needed by Facility. The charges for each transport will be assumed to be prompt payment and are as shown in exhibit "a".

7. Medical Necessity - Facility shall provide such certifications of medical necessity for transport hereinafter known as CMN's as needed for billing purposes when necessary. The Facility shall only order medically necessary levels of service from Provider;

8. Independent Contractor - Provider is at all times an independent contractor and not an agent or employee of Facility. No act of commission or omission by either party shall make the other a principal, agent or employee of the other;

9. Insurance - Provider shall at all times at its own expense maintain comprehensive public liability, medical/professional liability and motor vehicle insurance against all claims for damage or loss of property, and for bodily injury, including death resulting from acts of the Provider or its employees or agents negligence, with minimum limits of \$2,000,000. Provider agrees to maintain insurance coverage with carriers in limits mandated by law for workers compensation, occupational disease and employer liability;

10. Calls for service - Due to the increased staffing, equipment, and supply requirements by Provider in performance of this agreement, Facility agrees to place the first call for service for all emergency and non-emergency ambulance medical transports to Provider. Should the patient have a preference, this preference shall override this agreement in any event. In the event that timely and suitable transportation arrangements are not attainable through Provider, Facility shall make arrangements with any ambulance supplier that they deem advisable for said patient. This contract is not to be considered exclusive but shall only address the first call for service for said patient;

11. Discrimination - Provider will treat and transport any and all patients regardless of race, creed, national origin, or ability to pay, as deemed medically necessary by Facility. Insurance screening will not be done prior to any emergency transport of any patient from Facility. Provider currently has in place a written equal employment opportunity policy and will maintain this policy at all times;

*one year*  
12. Term of Agreement - This agreement shall begin upon signing and remain in force for the term of ~~three~~ *one* years from that date. This agreement shall automatically renew for a like period of time at its anniversary date unless a written notification to cancel or amend is received 90 days prior to the anniversary date of same;

13. Entire Agreement - This agreement constitutes the sole and entire agreement between the parties concerning the subject matter hereof, and may not be modified, discharged or amended except in writing signed by the duly authorized officers of each party;

14. Ambulette Wheel Chair Service - Provider will offer to the Facility the use of our ambulette vehicles as available for pre-scheduled transport of wheel chair bound patients. The charges for this service will be billed directly to insurance (if applicable) and covered when the patient qualifies for same; Should payment for these services be deemed payable by facility, the rates provided in Exhibit "A" shall prevail.

FROM EMT - Canton

(TUE) MAR 12 2013 9:20/ST. 8:18/No. 7530763028 P 4


15. In it For Life Program - Provider thru its "In it For Life Program" will, provide for the installation of an AED device on the premises of Facility which will remain the property of Provider but will be placed at the facility for use in emergency situations by the Staff of the Facility prior to our arrival to aid in providing the best chances for patient survival. This unit will be maintained and serviced by the Provider, and initial as well as on going training will be provided as to its care and safe use by the provider initially, and on an as needed basis. The need for this service, maintenance and training shall be determined by the Facility whom will notify Provider of need.

16. Confidentiality of Agreement - Due to the competitive nature of the medical field in general, rates and terms contained in this agreement are deemed confidential information by the Provider and is not to be released beyond the control of the Facility;

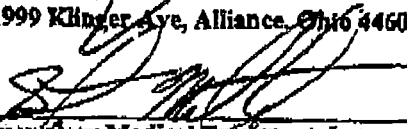
17. Indemnification - Each party hereby agrees to indemnify and hold harmless the other from and against any and all claims, costs, actions, causes of action, suits, judgments, damages, liabilities, losses or expenses included but not limited to attorney's fees and the fees and costs associated with same as a consequence of any acts or omissions of the other party, its employees, or agents.

18. Resident Life Link Contracts - Each resident of The Facility will be eligible for membership in our prepaid subscription program. The fee for this service will be \$15.00 per resident per one year period. This agreement does not at any time require the purchase of our Life Link plan for any patients but simply guarantees the availability of same to your residents and the pricing set forth;

19. Agreement - Due to the volatility in the healthcare environment and ever changing rules, should any part of this agreement for any reason be declared invalid, such decision shall not affect the validity of any remaining provisions, which remaining provisions shall remain in full force and effect as if this agreement had been executed with the invalid portion eliminated.

Signed   
Rose Lawn Gardens  
11999 Klinger Ave, Alliance, Ohio 44601

Dated 3-12, 2012  
13

Signed   
Emergency Medical Transport, Inc.  
2511 Waynesburg Dr. SE, Canton, Ohio 44707

Dated 3-12, 2012  
13

FROM EMT - Canton

(TUE)MAR 12 2013 9:21/ST. 8:19/No.7530765028 P 5

**Exhibit "A"**

*Pay 3/12/13*

Ambulance Transport Fee (up to 15 miles)	\$85.00
Ambulance Mileage over 15 miles	\$2.53 Loaded Mile
Wheel Chair Transport (up to 15 miles)	\$25.00
Mileage over 15 miles	\$1.00 / Loaded Mile

10% discount when payment received within 15 days of invoice date

Bryan Casey  
740-350-9095